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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/564,725

01/17/2006

Petur Gudjonsson

4395-9

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23117 7590 08/20/2007
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| EXAMINER |
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GIBSON, RANDY W

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| ART UNIT | PAPER NUMBER |
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2841

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| MAIL DATE | DELIVERY MODE |
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08/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/564,725

Applicant(s)

GUDJONSSON ET AL.

Examiner

Randy W. Gibson

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 Jan. 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connell (US # 6,151,866) in view of Ruppel (US # 5,109,936) and De Caris et al (US # 5,750,938). Connell disclose a method for batching items into receptacles weighing items on a first scale (Col. 3, lines 28-34), sorting them into a receptacle based on weight (Col. 5, lines 1-27), and weighing the receptacle on a second scale (Col. 4, lines 41-48). The idea of taking into account the initial tare weight of the receptacle would be inherently present, otherwise the second weighing step would be inaccurate and meaningless. Connell disclose the claimed invention except for using the data from the downstream check weigher for correction "system inaccuracies". However, the general idea of using data from a check weigher to dynamically recalibrate an upstream weighing scale is know as shown by the examples of Ruppel and De Caris, and would have been an obvious modification to the method disclosed in Connell motivated by desire to increase system accuracy.

With respect to claim 51, the examiner notes that counting scales are known, so it would have been obvious to use weight as an indication of the item count; the

examiner also notes that optical sensors, and even simply a human being, have been used in the prior art to check the count.

3. Claims 1-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO-A-0000036 (hereafter "D1") in view of U.S. # 3,945,448 (hereafter D2), Ruppel (US # 5,109,936) and De Caris et al (US # 5,750,938). Document D1, which is considered to represent the most relevant state of the art, discloses a method for batching items into receptacles, said method comprising determining an item weight by weighing the item on a first scale, and directing the item into the selected receptacle. The subject-matter of claim 1 differs from document D1 in that comprises determining initial weights of a plurality of receptacles by weighing the receptacles on receptacles scales, based on a comparison of the weight determined by weighing an item on the first scale and the initial weights of the receptacles, selecting one of the plurality of receptacles for the item thereby forming a batch, determining a resulting weight of the selected receptacle by weighing the receptacle on a corresponding receptacle scale, and using the data from the downstream check weigher for correction "system inaccuracies".

However, Document D2 discloses (see col. 1, lines 5-21; col. 3, lines 24-29; Col. 3, line 65 - col. 4, line 13; col. 4, lines 24-31; col. 5, lines 27-31) a system for minimizing the package weight variance based on a continuous comparison between the summation of the accumulation and signal representing the desired ultimate weight. It would have been obvious to modify the system of D1 to incorporate the features of D2

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motivated by to determine more precisely the weight of the batches and to reduce overweight or underweight.

The general idea of using data from a check weigher to dynamically recalibrate an upstream weighing scale is known as shown by the examples of Ruppel and De Caris, and would have been an obvious modification to the method disclosed in D1 motivated by desire to increase system accuracy.

Conclusion

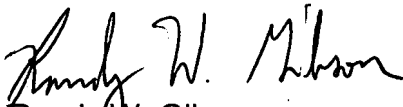
4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean A. Reichard can be reached on (571) 272-1984. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Randy W. Gibson
Primary Examiner
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